

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0506-0026

Case Title:

Ferguson Enterprises Inc.

Reporting Office:

Detroit, MI, Resident Office

Subject of Report:

Interview of [REDACTED] DWSD Contracts and Grants Manager

Activity Date:

May 17, 2010

Reporting Official and Date:

[REDACTED] RAC

20-MAY-2010, Signed by: [REDACTED] RAC

Approving Official and Date:

[REDACTED] SAC

24-MAY-2010, Approved by: [REDACTED], ASAC

SYNOPSIS

05/17/2010 - U.S. EPA CID Special Agent (SA) [REDACTED] interviewed [REDACTED] Construction and Grants Manager, Detroit Water & Sewerage Department (DWSD) regarding involvement in the bidding process for several DWSD contracts.

DETAILS

On May 17, 2010, U.S. EPA CID Special Agent (SA) [REDACTED] interviewed [REDACTED] Construction and Grants Manager, Detroit Water & Sewerage Department (DWSD) regarding [REDACTED] involvement in the bidding process for several DWSD contracts. [REDACTED] was previously interviewed by FBI SA [REDACTED] in this investigation. [REDACTED] can be contacted at [REDACTED] (office) and [REDACTED]

[REDACTED] was involved in the awarding of DWSD Contract PC 748, known as the Baby Creek CSO Control Facility which was awarded to [REDACTED]. [REDACTED] thought that the Patton Park allowance in the Baby Creek contract was overseen by the DWSD Engineering staff as [REDACTED] had no involvement in or knowledge of how the allowance was handled. [REDACTED] did not know if the allowance portion was bid out by the [REDACTED]. PC 748 was awarded via a Special Administrators Order and was a required project under the DWSD's National Pollution Discharge Elimination System permit and the federal consent decree with the U.S. EPA. Mayor [REDACTED] signed the Special Administrators Order for PC 748 on April 8, 2003, which [REDACTED] provided to SA [REDACTED] (See Attachment)

Contracts which are to be awarded via a Special Administrators Order are first reviewed by Budget, then Finance, then to the Law Department for review, and then to Purchasing. Purchasing generates a notice which is sent to the City Council informing them that the contract is going to be awarded. Within a day or two of the notice the Director of Purchasing signs the contract and transmittal letter. The contract is then returned to Contracts and Grants with copies going to each of the relevant departments.

[REDACTED] recalled that [REDACTED] was awarded the contract as they were the lowest responsive/equalized bidder. [REDACTED] explained that [REDACTED] was awarded equalization credits for being both a Detroit Based Business (DBB) and a Detroit Headquartered Business (DHB). Walsh Construction protested the awarding of the contract on the basis that DWSD inappropriately applied both the DBB and the DHB credits. [REDACTED] characterized the City of Detroit as getting heavily involved in applying equalization credits at this time as the purchasing ordinance had recently been revised. Due to the recent revisions the Contracts and Grants staff frequently interacted with [REDACTED], Director of the Purchasing Department, and [REDACTED] staff, over the

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interpretation and application of the ordinance. The spirit of the equalization credits was to give preference to Detroit small businesses and Detroit headquartered companies. The ordinance also authorizes the city departments to give a 1% credit for all joint ventures, and the intent was to give preference to joint ventures which consist of a smaller company joining with a large more established firm, thus giving the smaller company experience in executing larger contracts. The DWSD has incurred problems with the application of the joint venture equalization credit as medium and large companies are entering into joint ventures seemingly to be able to receive the additional equalization credits. [REDACTED] provided SA [REDACTED] with a blank copy of the Equalization Eligibility Form which is filled out by all bidders. (See Attachment)

[REDACTED] provided SA [REDACTED] with the Bid Tabulation/Equalization spreadsheet for PC 748. [REDACTED] pointed out where the equalization credits were applied to all of the companies' bids. The spreadsheet was received by the DWSD from [REDACTED] of the Purchasing Department on February 10, 2003. (See Attachment) [REDACTED] explained that typically there are at least a few drafts of the Bid Tabulation/Equalization spreadsheet which go between DWSD and Purchasing before being finalized. The copy provided to SA [REDACTED] is the only version [REDACTED] had in [REDACTED] file although previous versions may exist in the DWSD files. [REDACTED] no longer works for the DWSD and resides in Houston, Texas. At the time [REDACTED] reported to [REDACTED] or [REDACTED]

[REDACTED] recalls the two departments "bantering" back and forth about the application of equalization credits, especially given the fact that there was one non Detroit based company as a bidder. [REDACTED] explained that [REDACTED] interpretation of the revised ordinance that the equalization credits for being a DBB or DHB only applied when a non Detroit based company was a bidder. In this case [REDACTED], which is based in St. Louis, Missouri, was the only non Detroit based company. If they had not been a bidder then non of the equalization credits would have applied and [REDACTED] would not have been the lowest bidder.

Each bidder is supposed to include a copy of their DBB and DHB certificates with their bid packages. Sometimes the staff of the Purchasing Department will reject a bid package if it does not contain these certificates and the company is claiming equalization credits. [REDACTED] pulled the bid package submitted by [REDACTED] and noted that they submitted their DBB certificate but not the DHB certificate. [REDACTED] then noted that the bid package contained a letter addressed to [REDACTED] of Walbridge from [REDACTED] of the Detroit Human Rights Department which was dated October 22, 2002. The letter states that the Human Rights Department, based on recent documentation submitted, is in concurrence that [REDACTED] is a DHB. [REDACTED] explained that the DWSD likely took the letter as proof that Walbridge was a DHB although [REDACTED] finds it odd that [REDACTED] didn't just submit the certificate itself. The Human Rights certificates expire every three to five years. (See Attachment)

[REDACTED] also provided SA [REDACTED] with a copy of the Recommendation to Evaluate the Bidder Under Consideration for Award package which is dated February 18, 2010. The cover sheet of this packet of documents has [REDACTED] handwritten statement: "Please be advised the Director wants this package reviewed today and signed off of before the close of business today." [REDACTED] explained that it was not unusual for DWSD Director [REDACTED] to contact [REDACTED] directly about various issues although [REDACTED] can't recall if [REDACTED] called [REDACTED] or [REDACTED] supervisor. [REDACTED]

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on this issue. [REDACTED] opined that there could have been an urgency to this contract since there were certain milestones for the construction of Combined Sewer Overflows (CSO) in the federal Consent Decree and the NPDES permit or the fact that the project was being funded by State Revolving Funds.

[REDACTED] was not aware that Ferguson Enterprises Inc. was awarded the Patton Park ten million dollar allowance. [REDACTED] noted that neither the bid nor the contract dictates how the allowance is managed or executed but thought that Walbridge was going to execute the allowance work. [REDACTED] commented that it now makes sense to [REDACTED] why the Field Engineering staff asked [REDACTED] why [REDACTED] was doing the Patton Park work. At the time [REDACTED] just assumed [REDACTED] was handling the excavation work only.

[REDACTED] was the Contracts and Grants Manager assigned to the Synagro contract. [REDACTED] commented that [REDACTED] has never seen a contract move through the internal approval process so quickly. [REDACTED] group was given two weeks to review the contract itself, which was not written by Contracts and Grants, which is unusual. [REDACTED] did not know who wrote it but they clearly did not use the contract boilerplate language. [REDACTED] told [REDACTED] to "get it out of here" meaning reviewing it as quickly as possible. After leaving the Contracts and Grants group the contract was reviewed by Budget and then Purchasing within two days to a week at most. Typically this review process takes a month, at best two weeks and that is only if it is a Special Administrator Order or the federal government is involved.

[REDACTED] was also assigned to the 800 MHz Radio contract, known as 846A. [REDACTED] was not aware that White Construction was a sub contractor on the project and was surprised to hear that the value of [REDACTED] contract was \$20 million. [REDACTED] explained that the bid packages include a list of all Tier I and Tier II subcontractors and the dollar amounts of their contracts. This is taken into account when scoring the local economic development points in the bid evaluation process. For the type of contract which 846A was, the minority owned business credit is not applied although it can be looked at favorably when the contract is vetted to the Board of Water Commissioners. The DWSD should be made aware of any change to the list of contractors prior to the awarding of the contract. Changes to the contractors is rare and should not happen unless for some acceptable reason.

[REDACTED] staff assembled the letter of intent for this contract which was forwarded to the DWSD engineer assigned to the contract. The engineer in turn submits the letter of intent to the DWSD Director for signature. [REDACTED] could not recall any issues which would have warranted [REDACTED] from signing the letter of intent.

Also during this interview [REDACTED] provided SA [REDACTED] with documents related to DWS 844A. (See Attachment)

ATTACHMENT

PC 748 Transmittal Package
DWSD Equalization Form
PC 748 Bid Tabulation Form
PC 748 Bid Under Consideration for Award

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DWS 844A Bid Evaluation Memos

PC 748 Walbridge Bid Part 1 of 2

PC 748 Walbridge Bid Part 2 of 2

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